

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNITED STATES OF AMERICA

vs.

GABRIEL MARROQUIN, JR.

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**Criminal Action No.
3:20-CR-51-E**

MEMORANDUM OPINION AND ORDER OF DETENTION

By Order Accepting Report and Recommendation of the United States Magistrate Judge Concerning Plea of Guilty, filed January 26, 2021 (doc. 37), this matter has been referred for a hearing to determine whether it has been clearly shown that there are exceptional circumstances under 18 U.S.C. § 3145(c) why the defendant should not be detained under 18 U.S.C. § 3143(a)(2), and whether it has been shown by clear and convincing evidence that the defendant is likely to flee or pose a danger to any other person in the community if released under 18 U.S.C. § 3142(b) or (c). Gabriel Marroquin, Jr. (Defendant) appeared in person and through counsel for a hearing on February 26, 2021, and based on his concession that exceptional circumstances do not exist, he is ordered detained.

I. BACKGROUND

On January 12, 2021, pursuant to a plea agreement, Defendant entered a plea of guilty to one count of possession with intent to distribute a controlled substance in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B) before a U.S. Magistrate Judge, who recommended that the guilty plea be accepted. (*See* docs. 31, 32, 35, 36.) The recommendation provided notice that upon conviction, Defendant was subject to the mandatory detention provisions of 18 U.S.C. § 3143(a)(2), unless the Court made certain findings. (*See* doc. 36.) The Court accepted the recommendation on January 26, 2021, and referred the matter for hearing and determination of whether Defendant had made

the necessary showing to support the findings required for continued release. (*See* doc. 37.)

At the hearing, Defendant orally stated that on the record that he understood he was required to show exceptional circumstances why he should not be ordered detained pending sentencing, and that he agreed with his attorney that none existed.

II. ANALYSIS

Section 3143(a)(2) of Title 18 mandates the detention of persons who have been found guilty of certain offenses and who are awaiting imposition or execution of sentence, except in certain limited circumstances. It provides:

(2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 and is awaiting imposition or execution of sentence be detained unless--

(A)(i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or

(ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; and

(B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.

18 U.S.C. § 3143(a)(2). In addition, § 3145(c) provides that a person subject to mandatory detention under this section may also be ordered released if the person meets the conditions of release in § 3143(a)(1)¹ and it is clearly shown that there are exceptional reasons why the person's

¹Section 3143 (a)(1) states:

Except as provided in paragraph (2), the judicial officer shall order that a person who has been found guilty of an offense and who is awaiting imposition or execution of sentence, other than a person for whom the applicable guideline promulgated pursuant to 28 U.S.C. 994 does not recommend a term of imprisonment, be detained, unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c). If the judicial officer makes such a finding, such judicial officer shall order the release of the person in accordance with section 3142(b) or (c).

detention would not be appropriate. *See* 18 U.S.C. § 3145(c); *see also U.S. v. Rothenbach*, 170 F.3d 183 (5th Cir. 1999) (*per curiam*).²

The offenses listed in § 3143(a)(2) for which detention is mandatory at this stage of the proceedings described in § 3142(f)(1)(A)-(C) include crimes of violence, crimes with a life sentence, and drug offenses for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act, 21 U.S.C. 801 *et seq.* Defendant has now been found guilty of a violent offense that falls within the ambit of § 3142(f)(1). Accordingly, his detention pending sentencing is mandatory unless he makes the showings required under § 3143(a)(2) or § 3145(c).

Although the Fifth Circuit Court of Appeals has not defined “exceptional circumstances” for purposes of this statute, the Second Circuit has described it as “a unique combination of circumstances giving rise to situations that are out of the ordinary”, *United States v. DiSomma*, 951 F.2d 494, 497 (2d Cir. 1991). The Eighth Circuit has explained that “‘exceptional’ means ‘clearly out of the ordinary, uncommon, or rare.’” *United States v. Little*, 485 F.3d 1210, 1211 (8th Cir. 2007) (citation omitted). As noted, Defendant concedes that there are no exceptional reasons why his detention would not be appropriate. Accordingly, his detention pending sentencing is mandatory.

III. CONCLUSION

It is therefore ORDERED that Defendant be, and he is hereby, committed to the custody of the Attorney General and United States Marshal for further proceedings.

²In *U.S. v. Carr*, 947 F.2d 1239, 1240-41 (5th Cir. 1991), the Fifth Circuit explained that the “exceptional reasons” provision “was added to § 3145(c) with the mandatory detention provisions of § 3143(a)(2) and (b)(2) and was apparently designed to provide an avenue for exceptional discretionary relief from those provisions”. This provision therefore also applies to the initial determination of whether detention is mandatory under § 3143(a)(2) despite its inclusion in a section generally covering appeals.

It is ORDERED that Defendant, while being so held, be afforded reasonable opportunity for private consultation with counsel.

Signed this 26th day of February, 2021.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE